

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	
	)	CC Docket No. 96-61
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	CCB/CPD No. 97-54
	)	

SEP 29 1997

**COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC.**

On September 23, 1997, PrimeCo Personal Communications, L.P ("PrimeCo") filed a Motion for Stay of Enforcement of the Commission's rate integration policy as it applies to CMRS carriers.<sup>1/</sup> Comcast Cellular Communications, Inc. ("Comcast") supports PrimeCo's Motion for Stay of Enforcement because the policy was adopted without an adequate airing of the consequences it would have on the CMRS industry.<sup>2/</sup>

**I. A STAY OF THE RATE INTEGRATION POLICY AS TO CMRS IS REQUIRED TO CONSIDER ITS EFFECTS**

Comcast agrees with PrimeCo that staying the application of Section 64.1801 as discussed in the Order to CMRS providers will maintain the *status quo ante* and provide the Commission with an opportunity to develop a record which analyzes the CMRS-specific issues raised by its rate integration rule.

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<sup>1/</sup> See Motion for Stay of Enforcement of PrimeCo Personal Communications, L.P. CC Docket 96-61 (filed September 23, 1997). By Public Notice the Commission required interested parties to file comments by September 29, 1997, thus these comments are timely filed.

<sup>2/</sup> The rate integration rule which is the subject of this proceeding is found at 47 C.F.R. § 64.1801.

Because the *Notice* was insufficient with regard to CMRS issues, the Commission's *Reconsideration Order* does not adequately analyze the likely unintended consequences of the rate integration policy extended to CMRS. In the past, when the Commission's rules have generated unintended consequences the Commission has stayed the effectiveness of the rule.<sup>3/</sup> Where the Commission has not stayed the effectiveness of a particular rule and the Commission has not adequately explained the rational basis for its application of a requirement on a particular industry, the D.C. Circuit has reversed the Commission.<sup>4/</sup> In this case, there is neither a record addressing the rule's application to CMRS carriers nor an adequate discussion of the FCC's rationale for imposing a landline-based rate integration policy on CMRS carriers.<sup>5/</sup> A temporary stay of enforcement of Section 64.1801 as to CMRS providers would therefore be consistent with prior Commission precedent and principles of D.C. Circuit review.<sup>6/</sup>

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<sup>3/</sup> See *Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers*, 11 FCC Rcd 856 (1995); *Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service*, 8 FCC Rcd 8135 (1993).

<sup>4/</sup> See e.g., *Western Union Corporation v. FCC*, 856 F.2d 315 (D.C. Cir. 1988); *Communications Satellite Corporation v. FCC*, 836 F.2d 623 (D.C. Cir. 1988).

<sup>5/</sup> See *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971) (holding that where the Commission "casually ignored" prior policies when considering a rule change, such action was arbitrary and capricious.)

<sup>6/</sup> PrimeCo's motion for stay is an appropriate "after the fact" form of relief but it is clearly a second-best solution to the problems of regulatory compliance faced by the CMRS industry. Comcast is increasingly concerned that the Commission's decision making process is failing to address the unique issues faced by the CMRS industry. For example, the Commission did not specify critical details of how CMRS carriers would comply with the Commission's Universal Service Order when providing information on  
(continued...)

Several important aspects of the rate integration rule must be examined as they apply to CMRS carriers. For example, it is not clear which services the FCC intends to be subject to rate integration. CMRS carriers operate without regard to local exchange or state boundaries. Typically CMRS rates include two elements — toll and airtime charges — which vary from market to market. If the integration rule is applied only to toll charges, customers in different geographic markets still will pay different total rates for equivalent interexchange service because of the different airtime charges assessed on these interexchange calls. In addition, the definition of what constitutes interexchange telecommunications is complicated by a CMRS provider's MTA or regional-based local calling areas which often cross both state and LATA boundaries.<sup>7/</sup> Consequently, what is "interexchange" in a landline context often is "local" in a CMRS context. CMRS providers often do not assess toll charges for interstate calls because those calls are included in a CMRS subscriber's local calling area. While the rate integration rule may make sense for wireline services; the CMRS industry is fundamentally different than the wireline industry. The Commission's rate integration rules and policies should reflect this difference.

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<sup>6/</sup> (...continued)  
their revenue worksheets. See Petition for Reconsideration of Comcast Cellular Communications, Inc. and Vanguard Cellular Systems filed in CC Docket 96-45; CC Docket 97-21 (filed September 2, 1997). The Commission has an obligation to evaluate the impact of its rules on *all* industry segments, including CMRS providers.

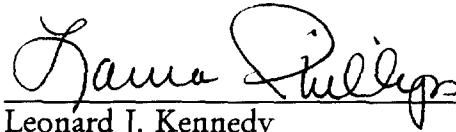
<sup>7/</sup> The Commission's *Local Competition Order* defines local calling areas for CMRS providers as Major Trading Areas, which often include parts of two or more states. See *Local Competition Order* at ¶ 1036.

## II. CONCLUSION

Comcast supports PrimeCo's Motion for Stay of Enforcement of Section 64.1801's rate integration requirement as it applies to CMRS carriers.

Respectfully submitted,

COMCAST CELLULAR COMMUNICATIONS, INC.

A handwritten signature in cursive script, appearing to read "Leonard J. Kennedy", is written over a horizontal line.

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September 29, 1997

## CERTIFICATE OF SERVICE

I, Cynthia Shaw, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 29th day of September, 1997, I caused copies of the foregoing "Comments of Comcast Cellular Communications, Inc." to be hand delivered to the following:

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